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4 Attorney for Defendants  
5 GERALD ARMSTRONG and  
6 THE GERALD ARMSTRONG CORPORATION

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF MARIN

11 CHURCH OF SCIENTOLOGY INTERNATIONAL, )  
a California not-for-profit )  
12 religious corporation, )  
13 Plaintiff, )  
14 vs. )  
15 GERALD ARMSTRONG; MICHAEL WALTON; )  
THE GERALD ARMSTRONG CORPORATION, )  
16 a California for-profit )  
corporation; DOES 1 through 100, )  
17 inclusive, )  
18 Defendants. )  
19

No. 157 680

DEFENDANTS' REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO COMMENCE  
COORDINATION PROCEEDINGS

Date: November 12, 1993  
Time: 9:00  
Dept: One  
Trial Date: None Set

20 I. INTRODUCTION

21 The legal efficacy of the Marin action is necessarily  
22 predicated upon obtaining a plaintiff's judgment in the  
23 consolidated Los Angeles action. <sup>1/</sup> Therefore, the issue

24  
25 <sup>1</sup> Since the instant motion was filed, as a related case  
the Los Angeles Superior Court first ordered Armstrong III to  
Department 30 where Armstrong II was already pending.  
26 (Defendants' Evidence, Ex. 1-O.) Department 30, sua sponte,  
consolidated Armstrong III with Armstrong II and stayed the  
27 consolidated action pending ruling from the Court of Appeal on the  
question of the contract's legality. (Defendants' Evidence, Ex.  
28 1-P.)

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1 whether or not the contract is enforceable is central to both the  
2 Marin action and the consolidated Los Angeles action.

3 In its opposition Scientology argues that the motion to  
4 commence coordination proceedings should be denied because it is  
5 "premature," there are no common questions of fact or law, that it  
6 is inconvenient, procedurally at odds with the other included  
7 cases, and would hinder the efficient utilization of judicial  
8 resources. For the reasons set forth below, Scientology's  
9 opposition is without merit.

10 Apparently, Scientology failed to observe that the notice of  
11 motion in this matter specifically stated that "the motion will be  
12 made on the grounds stated in the draft petition for coordination"  
13 found as Exhibit R to Defendants' Evidence In Support Of  
14 Defendants' Motion To Commence Coordination Proceedings. Thus,  
15 Scientology's statement that "[i]n a cursory manner, without  
16 specifically addressing the criteria for coordination, . . .  
17 Armstrong allude[s] to judicial economy but never really  
18 address[es] it" is inaccurate. (Opposition Memo. at p. 3:3-6.)

19 To the contrary, said draft petition specifically addresses  
20 the requirements of Code of Civil Procedure section 404.1 and  
21 Armstrong directs the Court's attention thereto.

22 Scientology omits noting that Armstrong's appeal is based  
23 upon the argument that the settlement contract at issue violates  
24 public policy because it seeks to suppress judicially credited  
25 evidence which discredits the Scientology organization. (Exhibit  
26 A to Declaration of Ford Greene in Support of Reply in Support of  
27  
28

1 Motion to Commence Coordination Proceedings) <sup>2/</sup> Scientology  
2 uses its omission to argue that the appeal is likely to be denied  
3 because the standard is an abuse of discretion. This is an  
4 apparent effort to overcome the insurmountable fact that the Marin  
5 action is necessarily dependant upon the success of the  
6 consolidated Los Angeles action for its legal efficacy.

7 **II. COORDINATION IS NOT PREMATURE**

8 Scientology contends that the coordination motion is  
9 premature because "[i]f Armstrong prevails in his appeal, none of  
10 the cases will go forward since there cannot be a breach of an  
11 illegal agreement." (Opposition Memo. at p. 4:15-17.)  
12 Scientology's argument that coordination should be denied as  
13 premature is nonsense. Rather, its argument supports granting the  
14 motion. Scientology says the motion is "premature" because the  
15 two other actions based on the same subject matter have been  
16 consolidated and stayed pending the outcome in the Court of Appeal  
17 and thus, it argues, the instant motion is for the purpose of  
18 delay. To the contrary, the gist of this motion is that it is a  
19 waste of time to proceed on one legal front (Marin) where such  
20

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21 <sup>2</sup> Thus, due to the issue of illegality, the standard on  
22 appeal is not limited to an abuse of discretion. A party need not  
23 plead the illegality as a defense and the failure to do so  
24 constitutes no waiver. In fact, the point may be raised at any  
25 time, in the trial court or on appeal, by either the parties or on  
26 the court's own motion. (Summary of California Law (9th Ed. 1987)  
27 Vol. 1, Contracts, § 444, at 397; LaFortune v. Ebie (1972) 26  
28 Cal.App.3d 72, 75 ["When the court discovers a fact which  
indicates that the contract is illegal and ought not to be  
enforced, it will, of its own motion, instigate an inquiry in  
relation thereto."]; Lewis & Queen v. M.M. Ball Sons (1957) 48  
Cal.2d 141, 147-148 ["[T]he court has both the power and the duty  
to ascertain the true facts in order that it may not unwittingly  
lend its assistance to the consummation or encouragement of what  
public policy forbids [and] may do so on its own motion."].)

1 proceeding can only be effective if litigation that is stayed on  
2 another legal front (Los Angeles) is successful. Scientology  
3 concedes this when it states, "[i]f there is no judgment for  
4 breach of the agreement, then this action is inappropriate." (Id.  
5 at p. 4:17-18.) It is for this very reason - to avoid a waste of  
6 time, money and resources - that coordination is sought.

7 Two actions have been filed charging Armstrong with breach of  
8 contract. Both actions are in Los Angeles and have been  
9 consolidated and stayed pending the outcome of appeal pursuant to  
10 the trial court's own motion. (Defendants' Evidence Ex. 1-P,  
11 Minute Order 10/6/93.) Pursuant to Scientology's own admission  
12 that the legal propriety of Armstrong IV is necessarily contingent  
13 upon a "judgment for breach," both cases should be tried together.  
14 The reason for this is that, at bottom, each case rides on the  
15 question of whether or not the contract is enforceable.

16 Thus, the motion to coordinate is not premature. It is  
17 timely. The reason it is timely is because it makes no sense to  
18 litigate this lawsuit in Marin which is based upon winning the  
19 other consolidated lawsuit in Los Angeles, particularly when the  
20 consolidated lawsuit is stayed pending a ruling from the Court of  
21 Appeal on the issue central to all: is the contract illegal? Why  
22 should litigation proceed apace in Marin when that litigation upon  
23 which it depends in order to be legally effective, or  
24 "appropriate," is going nowhere? Should the Court of Appeal not  
25 rule for one to two years, the Marin case could be tried and  
26 concluded without any decision having ever resulted from the  
27 consolidated case for breach upon which the Marin action's  
28 judicial efficacy is based. This is not delay. This is a motion

1 calling the Court's attention to an imminent waste of judicial  
2 resources and antithetical to judicial economy.

3 There are a number of additional reasons why the Marin  
4 litigation should not so proceed and why it should be coordinated  
5 with the consolidated action pending in Los Angeles.

6 (1) It involves the same questions as are being litigated in  
7 Los Angeles: whether the contract is enforceable or not.

8 (2) The same parties, the same witnesses and the same  
9 counsel are common to all three lawsuits: thus, the Marin action  
10 should be in Los Angeles where the consolidated action is venued.

11 <sup>3/</sup>

12 (3) Contrary to Scientology's assertion, the relative  
13 development of the cases is the same. Although Armstrong II is  
14 ready for trial, Armstrong III has not been answered and the  
15 special motion to strike the complaint has been stayed.

16 (Defendants' Evidence, Ex. 1-P.)

17 (4) The efficient use of judicial resources supports the  
18 coordination of the cases because two judges instead of one would  
19 have to become familiar with the same facts and because it makes  
20 no sense for the Marin action to proceed when the consolidated Los  
21 Angeles action upon which its efficacy is necessarily based is  
22 indefinitely stayed.

23 (5) There is a real possibility of duplicative and  
24 inconsistent rulings, orders and judgments. In Los Angeles the  
25 consolidated action is stayed, however, in Marin Scientology is

26  
27 <sup>3</sup> Armstrong II originally started as a Marin action and  
28 was transferred by this Court to Los Angeles Superior Court.  
(Defendants' Evidence, Ex. 1-E & 1-F.)

1 seeking to do the discovery for the Los Angeles case that the  
2 Court there has ordered it not to do. Furthermore, as noted  
3 already, should the Marin action not be coordinated with that in  
4 Los Angeles and not be subject to the same stay in effect in that  
5 jurisdiction, the Marin action could be litigated to a judgment  
6 that is a nullity. "The law neither does nor requires idle acts."  
7 (Civil Code section 3532.)

### 8 III. COORDINATION WILL PROMOTE THE ENDS OF JUSTICE

9 Armstrong specifically addresses each of the criteria for  
10 coordination in his Draft Petition for Coordination (Exhibit R to  
11 his Evidence in Support of the Motion) which was referenced in the  
12 notice of motion. For ease of reference, the arguments set forth  
13 therein are repeated below.

#### 14 A. Common Question Of Law Or Fact

15 "The common question of law which predominates each of  
16 the cases to be coordinated is whether or not the  
17 provisions [fn omitted] of the settlement contract that  
18 Scientology seeks to enforce against Armstrong are  
19 illegal and void as against public policy because they  
20 are intended to suppress evidence and obstruct justice.  
21 The success of each of Scientology's lawsuits against  
22 Armstrong are necessarily predicated upon the  
23 enforceability of the provisions upon which they rely.  
24 Scientology claims that Armstrong has breached the  
25 settlement contract in the following ways in response to  
26 which in Armstrong II Armstrong has asserted forty-three  
27 affirmative defenses: . . ."

28 (Id. at pp 4-5.) Although the only case in which an answer has  
29 been filed is Armstrong II, his answer to the other two lawsuits  
30 will be the same. Without a judgment in Los Angeles, the Marin  
31 action is pointless. Therefore, the enforceability of the  
32 contract that is being litigated in Los Angeles is central to the  
33 Marin action because if the contract is held to be void as against

1 public policy, it will be illegal and unenforceable. <sup>4/</sup>

2 **B. Convenience of the Parties, Witnesses and Counsel**

3 As to the convenience of the parties, witnesses and counsel,  
4 the draft petition states:

5 "Since the success or failure of each of the coordinated  
6 actions necessarily depends upon the enforceability or  
7 illegality of the provisions of the settlement contract  
8 to be enforced, it is to the convenience of the parties,  
9 witnesses and counsel that all three cases be  
10 coordinated. The proof as to each will be the same  
11 because it will go to the question of whether or not the  
12 provisions can be enforced. Thus, it would be more  
13 convenient for the parties, the witnesses and counsel to  
14 concentrate on one, rather than three, proceedings."

15 (Id. at pp. 7.)

16 **C. The relative development of the**  
17 **actions and the work product of counsel**

18 The draft petition states:

19 "Armstrong II: The development and work product of  
20 counsel in Armstrong II is extensive, particularly with  
21 respect to litigating Scientology's motion for a  
22 preliminary injunction, the partial grant of which is in  
23 front of the Second District Court of Appeal. All  
24 proceedings in this case have been stayed for over  
25 [seven] months pending a ruling of the Second District  
26 Court of Appeal on Armstrong's interlocutory appeal of  
27 the preliminary injunction which issued May 28, 1992.  
28 The trial court has twice refused to enforce the  
injunction by proceeding with any contempt hearings  
until there is guidance from the Court of Appeal. In  
the trial court as in the appellate court, the parties  
have extensively litigated the question of whether or  
not the provisions of the settlement contract that  
Scientology seeks to enforce are illegal. The

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23 <sup>4</sup> The issues in the instant case are not limited to  
24 whether Armstrong "fraudulently conveyed real property . . . to  
25 his attorney, . . . , and whether other hassles by Armstrong,  
26 which CSI seeks to discover, were also fraudulent consequences"  
27 (Opposition Memo. at p. 6:11-15). Until it is disposed of in the  
28 consolidated Los Angeles action, Armstrong's chief defense is that  
the contractual instrument upon which Scientology's lawsuit for  
"fraudulent conveyance" is predicated is illegal, void and  
unenforceable. Thus, in the absence of coordination, Armstrong  
will have to reinvent in Marin the wheel that has been litigated  
in Los Angeles.

1 definitive holding will probably come from the appellate  
2 court.

3 Armstrong III: In this action the case is barely  
4 developed. It is now pending before the same Department  
5 as is Armstrong II and is the subject of a special  
6 motion to strike pursuant to Code of Civil Procedure  
7 section 425.16 [fn. omitted] which is also predicated on  
8 the ground that Armstrong III is an effort to circumvent  
9 the stay Judge Horowitz issued in Armstrong II. The  
10 motion is set for hearing on October 6, 1993. [5/]  
11 Armstrong IV: This action which is the primary subject  
12 of the instant petition for coordination is at its  
13 inception. No responsive pleading have yet been filed."

14 (Id. at pp. 7-8.)

15 **D. The Efficient Utilization Of**  
16 **Judicial Facilities And Manpower**

17 "Scientology-related litigation is document intensive.  
18 Armstrong II is no exception. At the time that  
19 Armstrong filed his opening brief on \_\_\_\_\_,  
20 the clerk's docket had \_\_\_\_\_ entries. If the cases are  
21 not consolidated, it will involve duplicative and  
22 voluminous filings as well as requiring different courts  
23 to rule on the same issues."

24 (Id. at pp. 8-9.)

25 In addition to this, and as noted above, it would be  
26 supremely wasteful for the Marin action to proceed apace while at  
27 the same time being necessarily dependent for its legal efficacy  
28 upon a judgment in the Los Angeles action, an action which has  
29 been indefinitely stayed. It makes no sense to litigate the Marin  
30 action to judgment when it is meaningless without a plaintiff's  
31 judgment in Los Angeles.

32 \_\_\_\_\_  
33 <sup>5</sup> Subsequent to the drafting of the petition for  
34 coordination, Department 30 of the Los Angeles Superior Court  
35 consolidated Armstrong III with Armstrong II and then stayed  
36 proceedings in both actions pending the ruling from the Court of  
37 Appeal. (Defendants' Evidence, Ex. 1-P, Minute Order 10/6/93.)  
38 Contrary to the Scientology's misrepresentation that "[t]he Los  
39 Angeles actions are ready to proceed to trial" (Opposition at pp.  
40 6:25-26), Armstrong III is at the pleading stage with Armstrong's  
41 special motion to strike having been stayed pending the outcome of  
42 the appeal. (Ibid.) Armstrong IV is also at the pleading stage.



1           **E. The Calendar Of The Courts**

2           "Since Armstrong II and Armstrong III are already  
3 pending before Department 30 of the Los Angeles Superior  
4 Court, in the event that Armstrong's special motion to  
5 strike is denied, those two actions will be certainly be  
6 consolidated because of the fact that each case is  
7 identical. [<sup>6</sup>/] At the time that Judge Horowitz  
8 granted the stay in Armstrong II, the case was set to go  
9 to trial on May 5, 1993. The stay order requires that  
10 Judge Horowitz be notified within one day of the filing  
11 of the opinion of the Second District Court of Appeal so  
12 that trial can be rescheduled. Therefore, if Armstrong  
13 IV is coordinated with Armstrong II and Armstrong III,  
14 it will be on the same track as they are already. Thus,  
15 the burden on the Los Angeles Superior Court will be  
16 minimal. If Armstrong IV remains in Marin County  
17 Superior Court, no initial status conference has been  
18 held and no trial date has been scheduled."

11 (Id. at p. 9.)

12           **F. The Disadvantages Of Duplicative And**  
13           **Inconsistent Rulings, Orders Or Judgments**

14           "Since each of the subject actions hinge on whether or  
15 not the provisions of the settlement contract that  
16 Scientology seeks to enforce is illegal and  
17 unenforceable, the chances of duplicative and  
18 inconsistent rulings is great. Such would cause a great  
19 disadvantage because the parties would be subject to  
20 potentially contradictory directions from different  
21 superior courts of the State of California. Finally,  
22 Scientology's penchant and judicially recognized  
23 penchant for dirty litigation is stands on its own as a  
24 compelling reason."

19 (Id. at pp. 9-10.)

20           Already, in the Marin action, Scientology is seeking to  
21 conduct discovery that is pertinent to the stayed action in Los  
22 Angeles. (See Motion to Stay to be heard concomitantly with the  
23 instant motion) Thus, while the Court in Los Angeles has ordered  
24 that discovery be stayed, the Court in Marin will be asked to make  
25 orders compelling such discovery. Moreover, it would be  
26

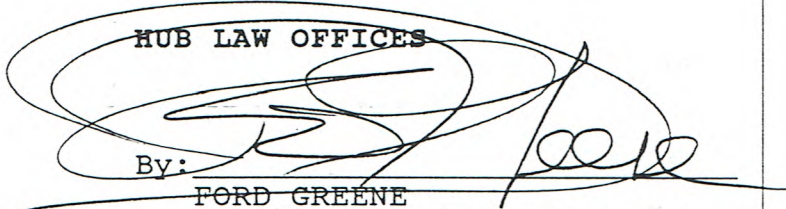
27 \_\_\_\_\_  
28           <sup>6</sup>       Indeed, such consolidation was ordered, sua sponte, on  
October 6, 1993. (Defendants' Evidence, Ex. 1-P.)

1 inconsistent for the Marin action to proceed to trial while the  
2 action in Los Angeles is stayed because the Marin action will be  
3 legally ineffectual without a plaintiff's judgment in Los Angeles.

4  
5 **IV. CONCLUSION**

6 Scientology has failed to raise any meaningful argument  
7 against coordination of the Marin action with the consolidated Los  
8 Angeles action. Therefore, it is respectfully submitted that the  
9 Court should grant Armstrong's motion to commence coordination  
10 proceedings.

11 DATED: November 9, 1993

HUB LAW OFFICES  


By: \_\_\_\_\_  
FORD GREENE  
Attorney for Defendant and  
Petitioners GERALD ARMSTRONG  
and THE GERALD ARMSTRONG  
CORPORATION

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DEFENDANTS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMMENCE COORDINATION PROCEEDINGS

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally service on the office of opposing counsel.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 9, 1993